

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROSELIND QUAIR and CHARLOTTE	)	CV F 02 5891 REC DLB
BERNA,	)	
	)	
	)	AMENDED ORDER GRANTING SANTA
Petitioners,	)	ROSA RANCHERIA TACHI-YOKUT TRIBE'S
	)	MOTION TO QUASH DEPOSITION
	)	SUBPOENA
v.	)	[DOC #177]
	)	
DENA BEGA, et al.,	)	
	)	
	)	
Respondents.	)	

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On March 29, 2005, the Santa Rosa Rancheria Tachi-Yokut Tribe ("Tribe") filed the instant motion to quash a deposition subpoena and subpoena for production of documents issued by Petitioners on November 23, 2004. The motion was heard on April 22, 2005, before the Honorable Dennis L. Beck. Laurie L. Quigley and Kirsten Zumwalt appeared on behalf of Respondents. Robert Rhoan, Patrick Guillory and Leah Castella appeared on behalf of Petitioners.

**BACKGROUND**

This action arises out of the June 1, 2000, disenrollment and banishment of Petitioners Roselind Quair and Charlotte Berna ("Petitioners") from the Tribe. On February 3, 2003, Petitioners, pursuant to Section 1303 of the Indian Civil Rights Act, 25 U.S.C. § 1301 et seq., ("ICRA"), filed amended petitions for writ of habeas corpus. Petitioners allege that because the

1 proceedings which resulted in their disenrollment as members of the Tribe and banishment from  
2 the Tribe's Rancheria were in violation of their rights guaranteed under ICRA, these actions  
3 constituted an unlawful detention and restraint of liberty.

4 On July 26, 2004, the Honorable Robert E. Coyle denied in part and granted in part the  
5 parties' cross-motions for summary judgment. Pursuant to the order, the issues remaining in this  
6 action are: (1) whether Petitioners were denied due process; and (2) whether Petitioners were  
7 denied a fair trial.

8 In August 2004, Petitioners filed a motion to reopen discovery. A hearing was held on  
9 September 24, 2004, before the Honorable Dennis L. Beck. Judge Beck deferred ruling on the  
10 motion pending the outcome of a re-hearing held by the Tribe on Petitioners' disenrollment and  
11 banishment. A re-hearing was held on October 1, 2004, and the Tribe again voted to disenroll  
12 and banish Petitioners.

13 On October 29, 2004, Judge Beck held a scheduling conference to consider Petitioners'  
14 request to re-open discovery. On December 22, 2004, Judge Beck issued an Amended  
15 Scheduling Order allowing the re-opening of discovery.

16 Pursuant to the amended scheduling order, Petitioner's noticed a number of depositions,  
17 including a deposition under Federal Rule of Civil Procedure 30(b)(6) of the Tribe's person most  
18 knowledgeable (PMK) on seven topics. The PMK notice also included fifteen document  
19 requests.

20 The Tribe filed the instant motion on March 29, 2005, and argues that the Tribe's  
21 sovereign immunity shields it from this Court's process. The Tribe contends there has been no  
22 waiver of tribal immunity under the Indian Civil Rights Act ("ICRA") and therefore Petitioners  
23 cannot pursue discovery against the Tribe. On April 19, 2005, the parties filed a joint statement  
24 regarding the discovery dispute. Petitioners argue the Tribe's sovereign immunity has been  
25 waived under the ICRA for the limited purpose of discovery in a habeas suit.

## 26 **DISCUSSION**

27 Tribal immunity from suit remains intact "absent express and unequivocal waiver of  
28 immunity by the tribe or abrogation of tribal immunity by Congress." *Burlington N. R.R. Co.*

1 *v. Blackfeet Tribe*, 924 F.2d 899, 901 (9th Cir.1991), *cert. denied*, 505 U.S. 1212, 112 S.Ct. 3013,  
2 120 L.Ed.2d 887 (1992). Petitioners concede that Section 1303 does not provide an "express and  
3 unequivocal waiver of immunity." Indeed, the Supreme Court has held, "[t]he provisions of  
4 habeas relief in Section 1303 did not constitute a general waiver of sovereign immunity." *Santa*  
5 *Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). Instead Petitioners urge this Court to find an  
6 implied waiver of tribal immunity in section 1303 for the limited purpose of permitting the  
7 gathering the information necessary to determine whether the procedural protections provided by  
8 the Tribe comport with those required by the ICRA. Petitioners argue that without such implied  
9 waiver, the ICRA is rendered unenforceable. The Court rejects Petitioners argument.

10 The Court does not find and Petitioner has not cited any binding authority for finding an  
11 implied waiver of tribal immunity under the ICRA. The decisions in this circuit tend to support  
12 the opposite conclusion. *See United States v. James*, 980 F.2d 1314 (9<sup>th</sup> Cir, 1992), *cert. denied*,  
13 510 U.S. 838 (1993) [Tribe was immune from process as they possessed tribal immunity at the  
14 time the subpoena was served, thereby affirming the district's court's decision to quash the  
15 subpoena and request for production of documents]; *see also Bishop Paiute v. County of Inyo*,  
16 291 F.3d 549 (9<sup>th</sup> Cir. 2002)[“this court reaffirms *James* and holds that the Tribe is possessed of  
17 sovereign immunity which bars the execution of the warrant”], *vacated and remanded on other*  
18 *grounds* 538 U.S. 701 (2003). Even if the Court were to adopt Petitioner's argument that in  
19 general, tribal immunity renders ICRA unenforceable, there is no merit to the argument in this  
20 case. The Tribe is not and cannot be a Respondent in an ICRA case. *See Santa Clara Pueblo v.*

1 *Martinez*, 436 U.S. 49 (1978). As Judge Coyle stated in his order granting in part cross motions  
2 for summary judgment:

3 [P]etitioners contend that the members of the Tribal Council are the proper  
4 respondents because they are empowered to end petitioners' banishment, asserting  
5 . . . The court agrees with petitioners. Requiring petitioners to name and sue every  
6 member of the Tribe's General Council as a respondent in a habeas corpus  
7 proceeding pursuant to Section 1303 makes that remedy unavailable for all  
practical purposes. It is apparent from the record before the court that the Tribal  
Council acts on behalf of and at the behest of the General Council. Therefore, the  
members of the Tribal Council are the proper respondents in this matter [citation  
omitted].<sup>1</sup>

8 The document requests issued to the Tribe with the deposition subpoena are virtually  
9 identical to the document requests issued to the individual Respondents. As the members of the  
10 Tribal Council, Respondents represent that they have "combed through their personal files, and  
11 the files of the Tribal Council so as to produce documents to Petitioners." Respondents represent  
12 that all documents sensitive to Petitioner's document requests have been produced. If there are  
13 issues regarding the adequacy of the document production, Petitioners can, as they have done,  
14 seek Court intervention in the discovery process. Petitioners have failed to identify and the Court  
15 cannot conceive of any relevant information Petitioners could obtain from the Tribe that they  
16 cannot obtain from the Respondents. Petitioners' insistence that obtaining discovery from the  
17 Tribe itself is essential to their case simply has no merit.

18 Accordingly, because there is no express waiver of immunity by the tribe or abrogation of  
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20 <sup>1</sup> The Court expresses no opinion and this Order in no way modifies Judge Coyle's Order  
21 regarding this issue.

1 tribal immunity by Congress under the ICRA and there is no support for an implied waiver of  
2 immunity, the Court finds that the Tribe was possessed of tribal immunity at the time the subject  
3 subpoenas were served. The Tribe's motion to quash the subject subpoenas is therefore  
4 GRANTED.

5 IT IS SO ORDERED.

6 **Dated: May 19, 2005**  
3b142a

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE